

FORMALIZING THE GULF OF MAINE INITIATIVE:

***Institutional Arrangements for Implementing The
Gulf of Maine Initiative.***

Prepared for the
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by

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TABLE OF CONTENTS

I.	PROJECT OBJECTIVE	1
II.	GULF OF MAINE COUNCIL ACTION PLAN OBJECTIVES	2
III.	STRUCTURAL/INSTITUTIONAL OPTIONS AVAILABLE TO THE COUNCIL .	3
	A. Common Legislation	3
	B. Regional Council or Task Force	4
	1. History and Usage	4
	2. Characteristics	4
	3. Strengths/Weaknesses	5
	C. Interstate Compact	5
	1. History and Usage	5
	2. Characteristics	6
	3. Strengths/Weaknesses	7
	D. Federal Interstate Compact	8
	E. Regional Compact (states and provinces)	9
	F. International Treaty	10
	1. History and Usage	10
	2. Strengths/Weaknesses	11
IV.	CANADIAN AND UNITED STATES EXAMPLES TO DRAW UPON	12
	A. The Great Lakes	12
	1. Structure/Participants/Objectives	12
	2. Strengths/Weaknesses	13
	3. Funding	14
	4. Role of State Dept./External Affairs	15
	5. The Evolving Quasi-Compact.	15
	B. British Columbia/States Oil Spill Task Force	17
	1. Structure/Participants/Objectives	17
	2. Strengths/Weaknesses	18
	3. Funding	18
	4. Role of State Dept./External Affairs	19
	5. An Emerging Pacific Resources Compact	19

C.	St. Croix International Waterway Commission	20
	1. Structure/Participants/Objectives	20
	2. Strengths/Weaknesses	21
	3. Funding	22
	4. Role of State Dept./External Affairs	22
D.	Northwest Power Planning Council	23
	1. Structure/Participants/Objectives	23
	2. Strengths/Weaknesses	24
	3. Funding	25
	4. Role of State Dept./External Affairs	25
E.	Northeastern Forest Fire Protection Council	25
	1. Structure/Participants/Objectives	25
	2. Strengths/Weaknesses	26
	3. Funding	27
	4. Role of State Dept./External Affairs	27
V.	RECOMMENDATIONS	28
VI.	BIBLIOGRAPHY	30
VII.	APPENDIX	A-1

I. PROJECT OBJECTIVE:

This project represents one of several important components of the multi-state/provincial Gulf of Maine Program sponsored by the provinces of New Brunswick and Nova Scotia and the states of Maine, New Hampshire and Massachusetts. In short, the purpose was to examine options available to the Council on the Marine Environment for pursuing the establishment of more formal recognition of the Gulf of Maine Initiative.

To this end, the following report is organized into three major parts. The first consists of an analysis of the various structural/institutional options available to the Council; the second examines relevant United States and Canadian examples; and, the third offers recommendations based on the various report findings. Issues addressed include the following: What are the universe of structural and institutional options available to the Council? What are the relative strengths and weaknesses of each approach? What Canadian and U.S. examples can be drawn upon? How successful has each of the options been in stimulating regional cooperation? What, if any, role should the U.S. State Department and Canadian Foreign Ministry play in the process? Is an international treaty necessary? What would be the most appropriate regional compact for the Gulf of Maine region? What are the elements of the most appropriate regional compact?

II. GULF OF MAINE COUNCIL ACTION PLAN OBJECTIVES:

- * To encourage generation of appropriate and timely monitoring information to environmental and resource managers and the general public in order to allow both efficient and effective management action, evaluation, and public awareness of such action.
- * To assist in the reduction of impacts of point source pollution of the Gulf of Maine.
- * To facilitate regional efforts to assure proper disposal of debris and vessel wastes within the marine environment of the Gulf.
- * To evaluate existing laws and regulations relating to Gulf natural resources in order to reduce disparities and improve performance of those laws and regulations.
- * To assist in the reduction of impacts of non-point source pollution on the Gulf of Maine.
- * To promote the protection, restoration, and enhancement of fish and wildlife habitat within the Gulf of Maine region.
- * To develop and implement a regional citizens' education and participation program with the intent of involving citizens in local resource management issues.¹

¹ The Gulf of Maine Action Plan, July 1991. Prepared by the Gulf of Maine Working Group for the Council on the Marine Environment, p. 6.

III. STRUCTURAL/INSTITUTIONAL OPTIONS AVAILABLE TO THE COUNCIL:

The options chosen for examination in the following section are the passing of common legislation, creation of a regional council or task force, interstate compact, federal interstate compact, regional compact (consisting of all five jurisdictions) and the passing of an international treaty. In illustrating these options, particular attention will be paid to their individual characteristics, history, usage, strengths and weaknesses.

A. Common Legislation

Although not of a "structural" or "institutional" form per se, this option is one that can be utilized regardless of which alternative the Council agrees to undertake. In short, this would involve comparing and contrasting the pertinent state, provincial and federal laws in order to pursue the passing of common legislation.²

The principal strength of this option is that it offers the opportunity to effectuate regional cooperation by adopting uniform state, provincial and federal laws, thereby mitigating the potential for conflict in achieving regulatory goals. In addition, it is something that can be achieved incrementally and continuously over the life-span of the organization. Moreover, working toward passing common legislation does not require any "formal" organizational structure other than perhaps a council or commission charged with collating the necessary legislative data, drafting proposed legislation, etc. Lastly, to do so conceivably may take a great deal less time to achieve than forming a regional interstate compact, for example.

The primary weakness of this effort lies in the potentially vast differences in Canadian and American environmental laws and the possible confusion and time loss that may result from subsequent legislative efforts. For this reason, such an endeavor should be combined with a more "structural" option in the furtherance of the Council's objectives.

² Such a study is already underway pursuant to a contract between the Maine State Planning Office and the Marine Law Institute at the University of Maine School of Law in Portland, Maine. The study will compare and contrast existing coastal and marine related laws and regulations adopted by the concerned states, provinces and the two federal governments. The Marine law Institute will develop joint findings with the Oceans Institute of Canada on the major points of coordination, inconsistencies, and gaps between the statutory responses in the various jurisdictions.

B. Regional Council or Task Force

This is essentially what is already in place and known as The Council on the Marine Environment. Created via the Agreement on Conservation of the Marine Environment of the Gulf of Maine by the governors of Maine, New Hampshire and Massachusetts, and the premiers of New Brunswick and Nova Scotia, the Council functions in many ways similar to the British Columbia/States Oil Spill Task Force and the St. Croix International Waterway Commission (examined in this report at pages 16 and 19, respectively). Broadly stated, the charge of all three groups is to protect, conserve and manage their respective area resources by conducting research, educating the community and coordinating regional efforts.

1. History and Usage:

There is a great deal that can be accomplished with a regional council or task force. The role of such an organization can be either advisory or planning/management or both. The institutional form has been used in a variety of settings ranging from an issue specific, advisory and recommendatory role to a permanent, multi-state authority with extensive powers.

2. Characteristics:

There are four principal characteristics of the council form:

1. it is a formally articulated agreement between two or more states to address an issue of mutual concern,
2. it represents the creation of a management and implementation entity,
3. it provides procedures to facilitate the participation and cooperative decision making of its signatories, and
4. it has a level of authority which does not invoke the compact clause of the United States Constitution.³

Regarding the last characteristic, the inherent limit of the device is that it is vested with very little or most often no regulatory authority. For this reason, it has generally been used by states in those instances where a formal multi-state organization, short of a compact agency is sought.

³ This section on characteristics is adapted generally from Michael Donahue, Institutional Arrangements for Great Lakes Management (MI: Michigan Sea Grant College Program, 1987), p. 136. [hereinafter DONAHUE].

3(a). Strengths:

Because this option is not subject to Congressional involvement or approval, it is easily-formed and potentially very flexible. It can be created in a variety of ways, including federal legislation, common state legislation, or an agreement between governors (and premiers, as in the case at hand). In addition, because the federal level is generally uninvolved, the agency has the freedom to serve a variety of management needs. In the past, similar groups have proven to be particularly strong when placed in an advisory and coordinating role.

3(b). Weaknesses:

Because the arrangement is not "federally-sanctioned," as is a compact, it is almost always limited to "soft-management" functions - those that do not interfere with established state or federal functions. In addition, it is not as legally binding upon its signatories as a compact and its funding is difficult to guarantee. Lastly, without a legally, not just "politically" binding agreement, the commitment levels of the jurisdictions are questionable over the life-span of the agency. For example, the St. Croix International Waterway Commission's funding problems, brought on by Maine's rapidly decreasing budget commitment, threatens the long-term survival of the Commission.⁴ For this reason and others, some groups like the British Columbia/States Oil Spill Task Force have recommended that an interstate (and possibly international) compact be created in order to ensure the succession of its objectives.

C. Interstate Compact

1. History and Usage:

"The most binding legal instrument to establish formal cooperation among states is known as the interstate compact or agreement."⁵ An interstate compact is essentially a contract or treaty between states which is sanctioned by the United States Congress. The constitutional support for the device is found in Article I, Section 10, clause 3, which reads that, "No state shall, without the Consent of Congress...enter into any Agreement or Compact with another State or with a foreign Power."⁶ Though the language seems relatively clear, it is so brief as to leave important questions unanswered, namely those regarding why and how

⁴ This is discussed in greater detail at p. 21.

⁵ Interstate Compacts 1783-1977 (A Revised Compilation) (Chicago: The Council of State Governments, 1977), p. vii.

⁶ U.S. Constit., Art. I, sec. 10, Cl. 3.

compacts are created.⁷ As a result, the rise of the interstate compact has largely been a process of trial and error for the states.

In the early history of the United States, the compact device was most often used by neighboring states to settle boundary disputes. By 1930, however, compacts were being advanced for different purposes. For example, of the approximately eighteen compacts formed during the 1920's and 1930's, one was directed at the control and reduction of pollution in New York Harbor (the Tri-State Pollution Compact, ratified by the states of Connecticut, New Jersey and New York), and another was created for the purpose of establishing park and recreational systems in New York and New Jersey (the Palisades Interstate Park Agreement).⁸ From 1940 to the mid 1970's, well over 100 compacts were created, thereby utilizing the device with more frequency and variety than ever before. During this time period, compacts were enacted in such areas as fisheries conservation, land and water resources, forest fire protection, mining practices, corrections, taxation, nuclear energy, educational facilities, civil defense, mass transit, health services and facilities, economic growth research, waste disposal, and flood control.⁹

2. Characteristics:

As characterized by Zimmermann and Wendell, the interstate compact has the following six distinguishing characteristics:

1. It is formal and contractual.
2. It is an agreement between the states themselves, similar in content, form, and wording to an international treaty, and usually embodied in state law in an identifiable and separate document called the "compact."
3. It is enacted in substantially identical words by the legislature of each compacting state.
4. At least in certain cases, consent of Congress must be obtained; in all cases, Congress may forbid the compact by

⁷ Frederick L. Zimmermann and M. Wendell, The Interstate Compact Since 1925 (Chicago: The Council of State Governments, 1951), p. 30. [hereinafter ZIMMERMANN].

⁸ Kevin J. Heron, "The Interstate Compact in Transition: From Cooperative State Action to Congressionally Coerced Agreements," St. John's Law Review, Volume 60, Fall 1985, Number 1, pp. 7-8.

⁹ Ibid., pp. 8-9.

specific enactment.

5. It can be enforced by suit in the Supreme Court of the United States if necessary.

6. It takes precedence over an ordinary state statute.¹⁰

3(a). Strengths:

As a fully accepted and effective instrument of interstate cooperation, the compact device offers the following strengths:

1. It is a tried, proven, legally binding and enforceable device which supercedes state law for the collective good of the compacting states. As such, it provides a degree of stability and continuity which is often lacking in other forms of agreement.

2. The interstate compact language generally provides for a Commission consisting of representatives from each of the signatory parties, which will be charged with the coordination and implementation of the compact's goals.

3. Use of the compact is extremely flexible and can be quite powerful; its development is limited only by the ability of its signatory parties to secure Congressional ratification. In theory, it has the capability to vest an interstate compact commission with broad management authority and regulatory power.

4. The device generally treats all of the signatories as equals, thereby encouraging the continued goodwill among the jurisdictions.

5. Altering or amending the compact generally requires the unanimous consent of its parties, again serving to facilitate an ongoing cooperative relationship between them.¹¹ It should be noted, however, that the amendment process can be a long and unpredictable exercise that requires a minimum of 2 to 5 years to complete. For this reason, many would consider it a compact weakness.

3(b). Weaknesses:

Weaknesses of the device generally stem not from its characteristics, but from the political environment surrounding its proposed use and operation. Perhaps the most daunting of obstacles

¹⁰ ZIMMERMANN, p. 42.

¹¹ DONAHUE, p.128.

is the length of time it can take to ratify a compact. For example, the second Hoover Commission determined that an average of eight years and nine months was required to complete the compacting process for those proposals which were able to survive all other necessary steps. "The attendant investment of time and political energy is substantial, and in some instances, might be better expended on alternate institutional arrangements."¹²

Because the success of the compact is so related to the political environment at the state, federal and Congressional levels, the often necessary compromises may leave the device considerably weaker than originally intended. If the concessions are not made, ratification of the compact may be interminably delayed.

Other criticisms of the compact include instances where the autonomous commissions formed by compact language have become politically unresponsive to their respective state constituencies and where some compacts/commissions have become ineffective, thereby resulting in another unnecessary layer of government.¹³

D. Federal Interstate Compact

Such a compact, in this instance, would consist of Maine, New Hampshire, Massachusetts and a federal representative. In every way, except the federal participation, this type of compact is identical to the interstate compact in terms of characteristics, creation, operation and potential powers. The role of the federal member can vary from non-voting, observatory status to full-member voting privileges.

In this case scenario, potential federal members might include representative(s) from the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Army Corps of Engineers, the Department of the Interior and the United States Coast Guard, to name a few.

The obvious strength of such an arrangement is that, by allowing for federal participation, the potential for conflict is mitigated, thereby accelerating the ratifying process. What essentially happens in such a case is that federal and state laws pertinent to the compact merge to further the compact's objectives. Although still experimental, one example of where this device has been used successfully can be seen with the Delaware River Basin

¹² Ibid., p. 128.

¹³ James P. Hill, "The Great Lakes Quasi Compact: An Emerging Paradigm For Regional Governance of U.S. Water Resources?" Detroit College of Law Review, Volume 1989, Spring, Issue 1, p. 9. [hereinafter HILL].

Compact.

In addition to those weaknesses listed for the interstate compact, the principal weakness relevant to this option is that while the federal level is included, the international one (the two Canadian provinces) is not. Thus, some variation of this device would be required to yield the "ideal" institutional form for the Council on the Marine Environment. Again, it is important to note that the inclusion of a federal member is not a tried and true form, but rather still very experimental. The fact that the federal government acquiesced to membership in the Delaware River Basin Compact does not guarantee that it will sanction this role in other situations.

E. Regional Compact (states and provinces)

This type of compact would consist of all five member jurisdictions of the Council on the Marine Environment. Largely due to the ambiguity of the compact clause and the seeming reluctance of Congress to endorse such an arrangement, there are very few binational compacts in existence. Nevertheless, it has precedence and is viewed as a legitimate institutional option for consideration. Like the federal interstate compact, this variation has the same basic strengths and weaknesses of the interstate compact. The point of departure from both the federal and the interstate compacts comes with the binational nature of this third type.

Strengths associated with this option include the following:

1. The device succeeds in addressing a region-specific concern which has perhaps been ineffectively addressed at the federal level.
2. The full, voting membership status of the two Canadian provinces secures a stronger commitment to the agency's goals than would another institutional form.
3. Binational funding of the compact-created management entity would be available in the compacting language.

Although admittedly a very attractive option for the Council, it is important to realize that the international compact is even more replete with legal and political obstacles than the previous two compact types. The limited history of the device suggests heavy opposition from both federal levels and a general reluctance of states to enter into such "contracts" with foreign entities.

The Northeastern Forest Fire Protection Compact (discussed in detail at pp. 24-26), created in 1949 and joined by Quebec and New Brunswick in 1970, is recognized as the first binational compact. Although there are now a few more of these compacts in existence,

they address such uncontroversial issues as the building of a bridge (the Buffalo-Port Erie Public Bridge Authority) and construction of an international access highway (Minnesota-Manitoba Highway Agreement). To date, the Northeastern Forest Fire Protection Compact is the only one which concerns a natural resource of broad significance.¹⁴ Given this background, Marian Ridgeway asserts that,

It is therefore clear that under rather limited circumstances an international agreement of the interstate compact type can be enacted and can function successfully. It is also probable that compacts on broader economic and social substantive matters involving international relations will not obtain support from the United States Department of State, unless (and this can by no means as yet be construed as applying to all cases) the international matters and actions which result shall be required to clear through the Department of State, which reserves the right to reject them.¹⁵

F. International Treaty

1. History and Usage:

The international treaty is a formal binational agreement which compares favorably with other types of institutional forms due to its binational nature, degree of formality and demonstrated success.¹⁶ The most potent international legal device available to two nations wishing to address a common concern, the treaty has long been used by countries in their common dealings.

The power to make a treaty is given expressly to the President, but ratification is made contingent upon the advice and consent of the Senate. Similarly, the ratification process in Canada requires approval of the Prime Minister with the advice and consent of the Parliament.¹⁷ An often cited example of the treaty

¹⁴ This section on the history of the binational compact device is derived from Marian C. Ridgeway, Interstate Compacts - A Question of Federalism (Carbondale and Edwardsville, IL: Southern Illinois University Press, 1971), pp. 155-156. [hereinafter RIDGEWAY].

¹⁵ Ibid., p. 156. Reference is made to the ratification problems encountered by the Great Lakes Basin Compact. For more detailed analysis, see pp. 11-15.

¹⁶ DONAHUE, p. 143.

¹⁷ Ibid., p. 143.

device is the "Treaty between the United States and Great Britain Relating to Boundary Waters and Questions between the United States and Canada" (commonly known as the Boundary Waters Treaty). Signed in 1909, this treaty created the International Joint Commission (IJC) and accorded it a variety of "quasi-judicial, investigative and surveillance/coordination functions."¹⁸

2(a). Strengths:

As a binational agreement negotiated and signed by the two executive branches, the treaty has a distinct legal stature in the international community. Although, unlike a compact, the treaty affords very little enforcement power, it creates the incentive for continued cooperation by virtue of its binational roots. Not surprisingly, treaties tend to be stable and enduring arrangements. Similar to the compact, the treaty is capable of creating an implementation or management body charged with overseeing the objectives of the treaty.

2(b). Weaknesses:

Because they involve the federal level, treaties are subject to many of the same problems encountered by the binational compact. Namely, treaties are established rarely and typically after laborious effort and lengthy negotiations. In addition, the likelihood of ratification of a treaty depends not only upon the political climate surrounding the issues at stake and the relations between the two countries, but the climate in Washington as well.

Most notably, treaty relations between the U.S. and Canada suffered a setback, when in 1980, the Senate failed to ratify a treaty for joint management of East Coast fisheries. Although the treaty had been signed by the two governments 18 months before, it became stuck in the Senate Foreign Relations Committee due to the opposition of some New England senators. As Michael Glennon notes, "the hand that signs is not the hand that delivers; what looks like a good bargain to diplomats at the negotiating table may look altogether different to legislators in the cold light of constituents' mail."¹⁹ In order to avoid this situation, the Council would have to secure commitment to its objectives from all relevant governmental levels.

¹⁸ Ibid., p. 144. The IJC has played a very important role in the Great Lakes region, and although a valuable example for further research, its jurisdiction does not extend to include ocean waters.

¹⁹ Michael Glennon, "The Senate Role in Treaty Ratification," American Journal of International Law, April, 1983, pp. 257-258.

IV. CANADIAN AND UNITED STATES EXAMPLES TO DRAW UPON

The purpose of the following section is to analyze several existing institutional organizations with the thought that one may serve as a potential role model for the Council. To that end, the Great Lakes Commission, British Columbia/States Oil Spill Task Force, St. Croix International Waterway Commission, Northwest Power Planning Council and Northeastern Forest Fire Protection Council have been chosen as examples based on their particular relevance to the objectives of the Gulf Council.

A. The Great Lakes

1. Structure/Participants/Objectives:

There are several groups at work in this region. Some of the larger and more well-known ones are as follows:

The International Joint Commission

Although not strictly a Great Lakes organization, the IJC does a great deal of its work in this region. Established by Canada and the United States under the Boundary Waters Treaty of 1909, it has jurisdiction over all water which flows between the U.S. and Canada.

The Great Lakes Commission

Created by interstate compact in 1955, the Commission is made up of representatives from the eight Great Lakes States (Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin). Its purpose is to guide, protect and advance the common interests of the eight member states.

The Center for the Great Lakes

Founded in 1983, the Center is a private, nonprofit organization committed to serving the needs of the Great Lakes decision makers. The Center played a key role in laying the groundwork for the Great Lakes Protection Fund.

The Council of Great Lakes Governors

Established in 1983, this group of the eight state governors has recorded such achievements as the Great Lakes Charter, the Great Lakes Toxic Substances Control Agreement and the Great Lakes Protection Fund.

The Great Lakes Protection Fund

Created in 1989, the Fund consists of a \$100 million endowment, initially realized by contributions from the eight Great Lakes states. The purpose of the Fund is to support those state and regional projects dedicated to controlling

toxics in the region.²⁰

Because it represents the most "formalized" group in the Great Lakes region, the Great Lakes Commission will generally be the basis for the following discussion.

As referenced above, the Commission was created by interstate compact in 1955. It was ratified by Congress in 1968 under the name of the Great Lakes Basin Compact. Currently, the Commission consists of 35 Commissioners - state officials, legislators and appointees from all eight of the states' governors. Article I of the compact identified its mandate as:

1. To promote the orderly, integrated, and comprehensive development, use, and conservation of the water resources of the Great Lakes Basin (hereinafter called the Basin).
2. To plan for the welfare and development of the water resources of the Basin as a whole as well as for those portions of the Basin which may have problems of special concern.
3. To make it possible for the states of the Basin and their people to derive the maximum benefit from utilization of public works, in the form of navigational aids or otherwise, which may exist or which may be constructed from time to time.
4. To advise in securing and maintaining a proper balance among industrial, commercial, agricultural, water supply, residential, recreational, and other legitimate uses of the water resources of the Basin.
5. To establish and maintain an intergovernmental agency to the end that the purposes of this compact may be accomplished more effectively.

2(a). Strengths:

In his lengthy study of the various existing institutions for Great Lakes management, Michael Donahue lists two of the Commission's primary strengths as having legal authority under the Great Lakes Basin Compact and the ability to address a broad range

²⁰ This section is derived from information found in Craig Freshley's report entitled, "Funding the Gulf of Maine Program," prepared for the Finance Network of the Gulf of Maine Council on the Marine Environment, January 1991, p. 73. For a more detailed study of the various Great Lakes organizations, see pp. 67-94 of that report. [hereinafter FRESHLEY].

of economic development and environmental issues.²¹ However, as James Hill notes, and Donahue agrees, "most studies, including a major survey of the attitudes of key Great Lakes decision makers, conclude that the existing Great Lakes compact is inadequate both as a regional management body and as an effective device for deterring federal intervention in the region's water control decisions."²² For this reason, a closer look at the inherent weaknesses of the compact/commission is warranted.

2(b). Weaknesses:

Based on extensive interviews and in-depth study, Donahue's laundry list of Commission weaknesses include the following:

limited mandate and absence of implementation authority; inadequate Canadian representation; limited state interest and support; inconsistent/inadequate state involvement and leadership; unclear direction at state and staff levels; lack of follow-through and impact; inability to achieve consensus; low public profile and level of support; singular focus on issues; poor caliber or inappropriate selection of Commissioners; and staffing/funding inadequacies.²³

Similarly, Hill sums up the Commission's primary deficiency as "the lack of political will on the part of the Great Lakes states to invest the necessary economic and political resources in these institutions necessary for resolving regional problems removed from their borders."²⁴ Moreover, because of its "soft" management authority to conduct only research, coordinate activities, advise on and advocate issues, no singular authority is left in charge of the region as a whole.²⁵

3. Funding:

Article VII of the Commission's bylaws provide that "all component states shall share equally in the expenses of the Commission."²⁶ According to Donahue, contributions by the states amount to approximately two-thirds of the Commission's total budget, with the remaining two-thirds coming from various grants,

²¹ DONAHUE, pp. 230-231.

²² HILL, p. 11.

²³ DONAHUE, p. 231.

²⁴ HILL, p. 12.

²⁵ Ibid., pp. 13-14.

²⁶ Great Lakes Commission Bylaws, Article VII.

contracts and interest on investments.²⁷

4. Role of State Dept./External Affairs:

This heading would more appropriately be titled, "role of Congress," as the courts and Congress have consistently limited the power of the Commission to those "soft" management functions referenced above. What is most interesting to note is that ratification of the compact, weakened as it was, still took Congress 13 years, and that was only after the role of the provinces was virtually extinguished. According to Marian Ridgeway, the entire consent question was inextricably entangled with the international question raised by the compact.²⁸

In drafting the compact so as to include the Canadian provinces, the language of Article II, Paragraph B read:

The Province of Ontario and the Province of Quebec, or either of them, may become states party to this compact by taking such action as their laws and the laws of the Government of Canada may prescribe for adherence thereto.

As Donahue notes, this language was the "focal point of contention by the U.S. Departments of State and Justice, both of whom were wary of usurpation of their authority in relations with a foreign power."²⁹ When Congress finally approved the compact in 1968, it included in Article IX an additional section which excluded the language of Article II, Paragraph B from consent because it "...purport[s] to authorize recommendations to, or cooperation with any foreign or international governments, political subdivisions, agencies or bodies."

Nevertheless, as detailed in the next section, some interesting developments may be on the horizon regarding the relationship of the Great Lakes efforts vis-a-vis the federal government.

5. The Evolving Quasi-Compact:

Because the region is the largest source of fresh water in North America and consequently affects at least eight states and two provinces, it provides an excellent example for the purposes of this study. Efforts in the region have been marked by a flurry of different players and by consistent court decisions asserting the

²⁷ FRESHLEY, p. 83.

²⁸ RIDGEWAY, p. 157.

²⁹ DONAHUE, p. 134.

primacy of Congress in regulating the area's resources.³⁰

Having examined the problems associated with the Great Lakes Basin Compact, the increasing need to find creative ways of making the compact device more effective is apparent.³¹ According to James Hill, the Council of Great Lakes Governors (COGS) has emerged as a "quasi compact," and a potentially very powerful actor in the region.

As stated previously, this group of the eight state governors was established in 1983. Briefly, its purpose was to "foster cooperation on environmental and economic policy issues common to its eight member states."³² The articles of incorporation detail a much more broad and ambitious charge, yet one that is still lacking in any regulatory power or authority. "Yet its high profile, political membership and organizational structure had unique characteristics that made it an ideal choice for spearheading efforts to improve regional governance in the Great Lakes basin."³³

Hill asserts that COGS went through a series of steps taken in a "compact-like process" that have established it as a quasi compact. First, it negotiated an agreement on common issues to be resolved on a joint basis (the Great Lakes Charter, signed in 1985 by COGS members, as well as the governors of New York and Pennsylvania and the premiers of Ontario and Quebec). COGS then pledged to initiate state enabling legislation in implementing the Charter. The final step involved obtaining the "consent" of Congress which came with an amendment to a general water resources authorization bill enacted by Congress - a very unorthodox way, to be sure. In short, the amendment transferred the Congressional power to prevent the diversion of Great Lakes water to the governors of the Great Lakes states.³⁴ The passing of this federal authority to COGS, though not creating a formal, traditional compact, gave it a new, previously undefined status. Hill concludes that this new role may have profound implications for the future of the region. If it is possible, an institutional fusing of COGS and the Great Lakes Commission may be the short-term answer to a long-term problem.

³⁰ HILL, p. 1.

³¹ Ibid., p. 3.

³² From a brochure published by the Council entitled, "Council of Great Lakes Governors - Great Lakes - Great Future."

³³ HILL, p. 15.

³⁴ For a more detailed discussion of how this occurred, see HILL, pp. 14-21.

B. British Columbia/States Oil Spill Task Force

1. Structure/Participants/Objectives:

The British Columbia/States Oil Spill Task Force was formed in 1989 by Alaska, Washington, Oregon, California and British Columbia. The original objectives of the Force - to jointly study, share information and develop recommendations on reducing the threat of oil spills on the West coast - were organized in response to the devastating Nestucca and Exxon Valdez oil spills.

Operation of the Task Force was initiated by an "Oil Spill Memorandum of Co-operation" initially signed on June 16, 1989 by Washington and British Columbia. Shortly thereafter, the remaining U.S. states signed on. The Memorandum dealt with future transboundary environment and wildlife issues and stressed the following:

- * enhancing the environment and protecting it from oil spills;
- * protecting transboundary fish and wildlife from damage caused by spills and other discharges of oil;
- * maintaining and improving a coordinated response to oil spills; and
- * pursuing the above in cooperation with the federal governments of Canada and the United States.

Under the memorandum, each jurisdiction agreed to appoint a representative to the task force, which would ultimately be charged with the following tasks:

- * creation of a joint emergency response plan;
- * evaluation of capabilities and technologies for spill prevention, response and containment;
- * review of tanker safety, routing and operating requirements;
- * inventory of equipment, material, personnel and other resources available to either the province or the states for use in oil spill control and clean-up operations; and
- * joint spill response drills and training.

Four subcommittees - Prevention Alternatives, Emergency Response, Financial Recovery and Technology Sharing - were established in pursuit of these goals.

The memorandum states that its duration is "intended to be perpetual," but that each party may terminate upon written notice to the others.³⁵

2(a). Strengths:

Many of the Task Force's recommendations have already been carried out. The five jurisdictions have conducted joint drills, shared information, coordinated their response efforts and prepared similar oil spill prevention legislation.³⁶ In addition, all members of the Task Force now have citizens' advisory groups charged with monitoring oil spill contingency planning in those states.³⁷

In view of these accomplishments, the primary strength of the Task Force appears to be the continuing high level of commitment among its signatories.

2(b). Weaknesses:

Some critics have complained that the oil spill prevention legislation prompted by the report of the States/British Columbia Task Force has a big bark and no bite. Referring to Washington House Bill 1027, one critic "warned that provisions of the bill 'are so weak that we will get all the rhetoric but no action.'"³⁸

The complaint is perhaps symptomatic of a larger problem befalling the efforts of the Task Force. As with many similar entities, this one has no regulatory authority. In response, the Task Force, along with two other bodies, has endorsed the creation of an interstate and possibly international compact (one which would include British Columbia) charged with having the regulatory power necessary to prevent oil spills.

3. Funding:

No formal budget was allocated to the Task Force. Under the Memorandum, members were directed to share costs associated with

³⁵ Final Report of the States/British Columbia Oil Spill Task Force, October 1990, pp. 15-17. [hereinafter REPORT].

³⁶ Ibid., pp. 18-19.

³⁷ "B.C. Forms Citizens' Spill Panel," Platt's Oilgram News, 3 May 1991, vol. 69, No. 86, p. 4.

³⁸ Jon Savelle, "Oil-Spill Prevention Proposed -- Critics Complain Drafts Are All Rhetoric But No Action," The Seattle Times, 24 February 1991, p. B2.

meetings and reports.³⁹

4. Role of State Dept./External Affairs:

The Task Force, not being a legal or administrative entity, functions according to existing state, provincial and federal laws and therefore has not been of concern to the federal level. With regard to the compact effort, no clear role has yet emerged.

5. An Emerging Pacific Ocean Resources Compact:

The Memorandum creating the Task Force is clear to state that the "parties do not intend by this Memorandum to create any separate legal or administrative entity."⁴⁰ This notwithstanding, in consultation with two interstate bodies, the Pacific Fisheries Task Force and the Ocean Resources Committee of the Council of State Government's Western Conference, the Task Force has endorsed the creation of an interstate compact which would also include Hawaii with Alaska, Washington, Oregon and California. In addition, the province of British Columbia could join the group, either as a non-voting member, or, if Congress and the Canadian federal government approved, as a full member.⁴¹

Legislation for the compact has now been introduced in all of the states (see Appendix A for a copy of the pertinent California bill). In essence, the compact would "have the authority to establish uniform safety standards for routes, crews and equipment for vessels transporting oil and hazardous substances up and down the west coast."⁴² Because the compact would provide uniform standards in the region rather than five different sets of state laws, the oil and shipping companies have responded favorably. Nonetheless, even if all five states adopt the legislation, congressional approval of the compact remains uncertain. "The compact's area includes portions of the Pacific and Arctic Oceans

³⁹ REPORT, p. 17.

⁴⁰ Oil Spill Memorandum of Co-operation Between the Province of British Columbia, the State of Washington, the State of Oregon, the State of Alaska and the State of California, June 1989.

⁴¹ Don Byron, "Pacific Ocean Compact: Bill Aims at Increasing State Influence," Alaska Journal of Commerce, 18 February 1991, vol. 13, No. 7, sec. 1, p. 1.

⁴² Ethan Rarick, "Western States to Consider Uniform Oil Shipping Rules," Proprietary to the United Press International, 31 January 1991, BC cycle.

bordering the states within the 200-mile exclusive economic zone."⁴³ State Senator Bill Bradbury, sponsor of the Oregon compact bill, has said that congressional approval depends on keeping the support of the oil and shipping industries."⁴⁴

C. St. Croix International Waterway Commission

1. Structure/Participants/Objectives:

"Though this water body is minute compared to the Gulf of Maine, the Commission serves as an excellent example of international cooperation for the purposes of protecting the vitality of a water body, in the interests of both Americans and Canadians. Furthermore, it is an agreement between a U.S. state and a Canadian province; the federal governments are not directly involved."⁴⁵

The impetus for the St. Croix International Waterway Commission was created by a Memorandum of Understanding signed in 1986 by New Brunswick and Maine. Enabling legislation for the Commission was passed in both jurisdictions in 1987. There are eight members of the Commission who are appointed equally by New Brunswick and Maine and serve on a voluntary basis for two years. The objectives of the Commission, as stated in the 1986 Memorandum are as follows:

- a) protect and manage an increasingly valuable natural and recreational resource for current and future usage;
- b) encourage and maintain a high quality back country recreational and educational experience for users of the resource;
- c) encourage tourism, based on identified themes, with resultant economic benefits to the region;
- d) protect and promote awareness of human heritage resources including both Indian and early European;
- e) ensure coordination in the planning and management of a shared resource;

⁴³ "Five Pacific Ocean States Working Toward Offshore Oil Transportation Plan," The Bureau of National Affairs, Inc., Daily Report for Executives, 27 February 1991, p. A-3.

⁴⁴ Ibid.

⁴⁵ FRESHLEY, p. 115.

f) establish the mechanisms and processes to be used to ensure fair representation of all user groups thereby minimizing conflicts; and

g) obtain optimal benefits from recreational and educational use of the resource while recognizing the historic and current economic importance of the forest resource including its management and commercial utilization."⁴⁶

The Commission's 1988-1989 Annual Report identifies its mission as:

"To ensure cooperative, comprehensive management of the St. Croix International Waterway's natural, historical and recreational resources to provide maximum long term benefits - in environmental, cultural and economic terms - to the people who live in or visit the St. Croix region."⁴⁷

2(a). Strengths:

Since the Commission began full operation in January of 1989, it has seen several accomplishments. Within a year, the Commission was able to obtain and integrate Canadian and American information on the river into a database for use as a management tool. The Commission has also created a common map of the region and a shared library consisting of over 500 volumes. Most notable is an action or management plan drafted by the commission, which names long-term legislative and environmental goals for the region and is anticipated to succeed in both legislatures in late fall of 1991.

Lee Sochasky, Executive Director of the Commission, identifies the fact that the Commission is viewed as the "river's advocate," and not as belonging to any one interest as its greatest strength.⁴⁸ As a result, Sochasky stated that the Commission has been able to work successfully with corporations and other sometimes hard-to-reach groups.

⁴⁶ Memorandum of Understanding Between the State of Maine of the United States and the Province of New Brunswick of Canada Regarding the St. Croix International Waterway, 17 November 1986. [hereinafter MEMORANDUM].

⁴⁷ St. Croix International Waterway Commission, Annual Report 1988-1989, p. 5.

⁴⁸ Telephone interview with Lee Sochasky, Executive Director, St. Croix International Waterway Commission, 16 July 1991.

2(b). Weaknesses:

The two primary weaknesses of the Commission are that it has no regulatory power and that its funding is unstable. The first weakness has not presented a major problem thus far, probably due to the success that the Commission has had in dealing with the various groups (landowners, government agencies, industry, etc.). The second weakness, however, does place the Commission in jeopardy. As Lee Sochasky put it, because the Commission was created via a memorandum of understanding and not something more permanent, it "could be eliminated tomorrow." As things stand now, due to the well-known budget problems in Maine, the Maine state government cut the Commission's budget from \$50,000 in 1990 to \$10,000 in 1991. Although New Brunswick has still committed to giving \$50,000, the Commission funds will only carry it through October, 1991.

3. Funding:

The Commission is funded primarily by the governments of Maine and New Brunswick. The 1986 Memorandum of Understanding provides that, "the State of Maine and the Province of New Brunswick shall share the costs of developing and managing the St. Croix International Waterway."⁴⁹ The Commission is also able to accept funds from other sources including federal agencies, private corporations and individuals. To this end, the Commission has charitable status in both Canada and the United States. Given the recent developments with the decrease in Maine's financial commitment, this status may prove to be crucial to the long-term survival of the Commission.

4. Role of State Dept./External Affairs:

Since the Commission has not challenged or dealt directly with any federal jurisdiction matters, it has not had any contact with the State Department. However, regarding both federal levels of government, it is provided in the Memorandum that, "representatives of the Governments of the United States and Canada will be invited as observers by the Governor of Maine and the Premier of New Brunswick," but that those representatives "shall not be counted for purposes of determining a quorum."⁵⁰

⁴⁹ MEMORANDUM.

⁵⁰ Ibid.

D. Northwest Power Planning Council

1. Structure/Participants/Objectives:

Currently, there are only two interstate compacts which are able to exert authority over federal agencies. The power to do so must first be explicitly assented to by Congress.⁵¹ One is the Northwest Power Planning Council and the other is the Columbia River Gorge Commission. Of the two, the Northwest Power Council is considered to be "the more powerful multi-state compact."⁵²

Through the Northwest Power Act of 1980 (PL 96-501), the United States Congress authorized the states of Idaho, Montana, Washington and Oregon to enter into an interstate compact, thereby creating the Northwest Power Planning Council. The Council consists of eight members - two appointed by each of the four state governors. Under the Act, Congress assigned the Council the following three duties:

1. Develop a 20-year electrical power plan that will guarantee adequate and reliable energy at the lowest cost to the Northwest.
2. Develop a program to protect and rebuild the fish and wildlife populations in the Columbia River Basin that have been affected by hydroelectric development.
3. Conduct an extensive program to involve the public in the Council's decision-making processes.

As such, the Council is a "policy-making" entity. The primary agencies that work under the Council to implement its power plan and fish and wildlife programs are the Bonneville Power Administration, the U.S. Army Corps of Engineers, the Bureau of Reclamation and the Federal Energy Regulatory Commission. The Council also works with various utilities, environmental groups, state and local governments, fish and wildlife agencies, Indian tribes and others who are involved in energy, fish and wildlife

⁵¹ This authority was challenged and upheld in Seattle Master Builders v. Pacific Northwest Power and Conservation Council, 786 F.2d. 1359, 1364 (1986).

⁵² Harry Bader, "Potential Utility of an Interstate Compact as a Vehicle for Oil Spill Prevention and Response," SPILL - The Wreck of the Exxon Valdez, Appendix M, University of Alaska Sea Grant Legal Research Team, 1989, p. 5.

issues.⁵³

2(a). Strengths:

The primary strength of the Council is, without a doubt, its policy-making and influencing capacity. The most specific acknowledgment of the Council's strength is Section 6(c) of the Northwest Power Act which requires Bonneville to submit any major acquisition (anything over 500 megawatts and of five-years' duration) to the Council for review. If the Council does not find the acquisition consistent with its power plan or fish and wildlife programs, it may refuse the acquisition. Bonneville's only remedy then is to go to the U.S. Congress.⁵⁴ In short, this is a case in which the federal government has allowed its' agencies to be bound by a non-federal agency.

Fortunately for the Council, another strength has been the generally favorable relationship it has shared with Bonneville. "By the time [James] Jura took office as Bonneville Administrator, both agencies had begun to pay less attention to defining their turfs, and began working together toward shared objectives.... Today, I would characterize the relationship between the Council and Bonneville as a very strong, cooperative and productive working relationship."⁵⁵

2(b). Weaknesses:

Despite the authority of the Council vis-a-vis the various federal agencies, it is often still forced to go to Congress to achieve its objectives. For example, one of the biggest problems addressed in the Council's fish and wildlife program has been high fish mortality caused by the turbines of the dams and altered river flows. To mitigate this, the Council has sought to put in place permanent bypass systems at each dam. To do so, however, it must work with the Army Corps of Engineers. In 1987, 1988 and again in 1989, the Council had to go to Congress to get the Corps to fund the much-needed installation of bypass systems. As Tom Trulove, Chairman of the Council, noted, "so far, Congress has responded, but it has taken a lot of regional resources, and,

⁵³ This information on the structure and objectives of the Council has been derived from a pamphlet entitled, "Northwest Power Planning Council."

⁵⁴ Remarks Before the Oregon Chapter Federal Bar Association by Tom Trulove, Chairman, Northwest Power Planning Council, 21 December 1989, p. 4.

⁵⁵ Ibid., pp. 9-10.

frankly, the Corps' foot-dragging on this issue has set back the schedule for installing screens."⁵⁶

3. Funding:

The Council is funded by Bonneville Power Administration rate revenues, but in no way is part of Bonneville.⁵⁷ The Council's budget for Fiscal Year 1991 was \$7,616,000.⁵⁸

4. Role of State Dept./External Affairs:

Not applicable as there is no foreign contingent to the Council.

E. Northeastern Forest Fire Protection Commission

1. Structure/Participants/Objectives:

The Northeastern Forest Fire Protection Commission was created in 1949 by interstate compact. Besides being the first forest fire protection compact, it was the first to authorize participation outside the United States, by adjacent Provinces in Canada.⁵⁹ Its original members were Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island (in 1950), and Vermont. The Canadian provinces of New Brunswick and Quebec became full members in 1970. Article I of the compact asserts its purpose as, "To promote effective prevention and control of forest fires in the northeastern region of the United States and adjacent areas in Canada."⁶⁰ Article IV lists its duties as the following:

- (1) (a) To study method and practice, etc., for bringing about prevention and control of forest fires.
- (b) To coordinate the forest fire plans and work of the

⁵⁶ Ibid., p. 15.

⁵⁷ Ibid., p. 1.

⁵⁸ Northwest Power Planning Council, 1990 Annual Report, p. 38.

⁵⁹ "The Northeastern Forest Fire Protection Commission - What it is and how it operates," p. B-1.

⁶⁰ Ibid., p. B-2.

several states.

(c) to facilitate the sending of aid.

- (2) Formulate and revise a regional forest fire plan to serve as a common fire plan for the region.
- (3) Recommend to the several Governors and State Legislatures measures to promote the purpose of the compact.
- (4) Consult and advise with administrative agencies of the states regarding fire control problems and recommend the adoption of appropriate regulations.
- (5) Recommend to the states any and all measures which will effectuate the prevention and control of forest fires.⁶¹

The Commission consists of 27 Commissioners - three from each of the states and provinces. The appointed Commissioners and various forest fire personnel meet periodically for mutual direction, training, experience, and information exchange.⁶²

2(a). Strengths:

The greatest strength of the Commission according to its Executive Director, Richard Mullavey, is that it is "institutionalized." In other words, because it was created by interstate compact, it has avoided the financial and other pitfalls common to groups like the St. Croix International Waterway Commission.⁶³ In addition, its longevity (since 1949) establishes it as one of the oldest, still-active compacts.

2(b). Weaknesses:

With regard to its unambiguous and narrow objective, the Commission has genuinely succeeded and is indeed a very good example of an effective compact/commission. Mullavey's only complaint (if it can be referred to as such) is that there are not

⁶¹ Ibid., p. B-3.

⁶² Northeastern Forest Fire Protection Commission, 1990 Annual Report.

⁶³ Telephone interview with Richard Mullavey, Executive Director, Northeastern Forest Fire Commission, 23 July 1991. The address for the Commission is 10 Ladybug Lane, Concord, N.H. 03301; telephone (603) 224-6966.

enough catastrophes for the Commission to really "strut its stuff."⁶⁴

3. Funding:

With a budget of only \$28,000 for fiscal year 1991, funding is hardly a problem for any budget. Still, the system that the Commission has in place is both interesting and unique in that one-half of the budget is divided up among the nine jurisdictions according to their total acreage in the compact area. The member assessments range all the way from 0.9% contribution in Rhode Island (512 protected acres) to 29.1% in Maine (17,743 protected acres).⁶⁵ The other half of the budget is divided equally among all nine states and provinces. Thus, the funding for the Commission is derived almost entirely from the budgets of the states and provinces, with the exception of an occasional federal grant.

4. Role of State Dept./External Affairs:

The two federal levels have expressed little or no concern regarding the Commission since Article XIII of the compact states that it does not limit the powers of the states (vis-a-vis the provinces) nor affect cooperation with the U.S. Forest Service.⁶⁶ Moreover, the straightforward nature of the Commission's objective - to prevent and control forest fires - is instrumental in garnering support from all governmental levels. As Mullavey put it, "fire doesn't respect any boundaries - international or otherwise."⁶⁷

⁶⁴ Ibid.

⁶⁵ Operations Manual for the Northeastern Forest Fire Protection Commission, July 1990, p. 17.

⁶⁶ "The Northeastern Forest Fire Protection Commission - What it is and how it operates," p. B-1.

⁶⁷ Telephone interview, 23 July 1991.

V. RECOMMENDATIONS

As demonstrated in this report, there are a number of institutional forms and examples for the Council on the Marine Environment to follow.⁶⁸ What is most important to bear in mind is that, "form should follow function." That is, whatever the Council decides its function to be, so it effectively chooses the form it must take.

Thus far, the Council has chosen a "soft-management" course (see Council objectives, p. 1). The Council has also demonstrated its desire to remain a five jurisdiction group; more specifically, to ensure the continued full participation of the Canadian provinces. As long as the Council remains on this path, the form that it utilizes now is sufficient. If, however, the Council should decide to pursue a more authoritative and perhaps regulatory position in the region, it must consider a different approach.

It has been demonstrated that the presence of an international entity - in this case, a Canadian province - almost immediately secures the attention of the U.S. State Department. To be sure, there are a great many obstacles in the way of maintaining full Canadian membership. For this reason, the Council might seriously consider remaining in the position it holds today and adopting a wait-and-see approach as to how powerful a regional player it may become. Should, however, the Council think it may want some regulatory power in the future, it may very well want to start now the process of assessing and garnering political support.

After examining the various institutional forms available to the Council, perhaps the most appropriate (and again, only if the Council wants the regulatory power potentially secured by this method) choice would be a combination of the federal interstate compact and the regional compact; that is, a compact consisting of the five jurisdictions plus a federal member. Although this would likely take a great deal of time and negotiation, the presence of the federal level(s) at the outset might serve to mitigate likely ratification problems.⁶⁹

⁶⁸ For a more detailed discussion of these and other forms, see the DONAHUE book. It can be ordered from the Michigan Sea Grant College Program by calling their publications office at (313) 764-1138.

⁶⁹ As noted in Chapter II, Section D, some federal organizations which might be approached include the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Army Corps of Engineers, the Department of the Interior and the United States Coast Guard.

This option is slightly preferable to a treaty in that the five compacting jurisdictions are already united and working toward their common objectives. Bringing in the federal levels at this point, for the purpose of negotiating a treaty broad enough to allow for a regulatory commission, would likely delay the Council's goals and take potentially just as long to ratify as a compact. In other words, since the federal levels have been uninvolved to date, it might be best for it to stay that way. In so doing, the Council members are able to maintain their positions as the principal negotiators and spokespersons rather than forfeit that role to the executive branches.

If it appeared that such a compact would not be ratified, and the Council still wanted to be a regulatory power, it might choose to create an interstate compact consisting of Maine, New Hampshire and Massachusetts with a Canadian equivalent. Although this would likely weaken the relationship between the five jurisdictions, it would be one way to secure an authoritative position for the Council's goals in the region.

In any event, the deciding factor in the Council's choice for its future comes down to whether it desires a governing role in the region, similar to that of the Northwest Power Planning Council or a "softer," advisory and coordinating role as with the St. Croix International Waterway Commission. Given the commendable progress and cohesiveness already characteristic of the Council, the opportunity certainly exists for it to forge its own path in becoming an important regional entity.

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APPENDIX A

1ST DOCUMENT of Level 1 printed in FULL format.

THE STATE OF CALIFORNIA
BILL TEXT
STATENET

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CALIFORNIA 1991-92 REGULAR SESSION

ASSEMBLY BILL 393

1991 CA A.B. 393

VERSION: Introduced

DATE-INTRO: January 31, 1991

SYNOPSIS:

An act to add Division 21.5 (commencing with Section 31500) to the Public Resources Code, relating to coastal resources.

DIGEST:

LEGISLATIVE COUNSEL'S DIGEST

AB 393, as introduced, Hauser. Pacific Ocean Resources Compact.

Under existing law, the Administrator for Oil Spill Response is vested with specified powers and duties concerning prevention, removal, abatement, response, containment, and cleanup of oil spills in marine waters of the state.

This bill would ratify the Pacific Ocean Resources Compact containing specified provisions for the regulation of the transportation of oil or hazardous substances on offshore waters and specified related matters. The compact would take effect after one or more of the States of Alaska, Hawaii, Oregon, or Washington ratify the compact and consent is granted by Congress.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

TEXT: The people of the State of California do enact as follows:

SECTION 1. Division 21.5 (commencing with Section 31500) is added to the Public Resources Code, to read:

DIVISION 21.5. PACIFIC OCEAN RESOURCES COMPACT

31500. (a) The Legislature of the State of California hereby ratifies the Pacific Ocean Resources Compact as set forth in Section 31501. The compact shall take effect after one or more of the States of Alaska, Hawaii, Oregon, or Washington ratify the compact and consent is granted by Congress as required by Section 10 of Article I of the Constitution of the United States.

(b) In addition to the States of Alaska, Hawaii, Oregon, and Washington, the Province of British Columbia may become an associate party to the compact, without voting power. Upon request of the Province of British Columbia and

1991 CA A.B. 393

approval of Congress, the Province of British Columbia may become a full party to this compact with the same rights and powers as the party states.

31501. The provisions of the Pacific Ocean Resources Compact are as follows:

Article 1. Findings and Purpose

(a) The parties recognize the following:

(1) The States of Alaska, California, Hawaii, Oregon, and Washington and the Province of British Columbia have a common interest in the protection of marine and coastal resources. This common interest results from the following:

(A) The fluid, dynamic ocean currents and atmospheric winds that carry pollutants beyond one party's coastal area to another.

(B) The migratory nature of many important living marine resources that depend upon the marine habitat of various parties for different parts of their life cycle.

(C) The economic reliance of each party upon renewable resources of the ocean.

(D) The use of the ocean for transport of oil and other hazardous substances between ports in the various parties and other nations.

(E) A regional interest in providing a stable environment for those communities dependent upon ocean resources and ocean trade for a livelihood.

(2) Some marine resource activities, such as fisheries, are currently highly managed with regard for their regional or transboundary nature through existing state programs, regional fisheries councils, interstate compacts, and international treaties. Because there are existing formal mechanisms for interstate cooperation and coordination for these marine resource activities, this compact is not intended to encompass these activities.

(3) A formal interstate agreement does not exist to address and resolve issues of mutual concern or to coordinate individual programs of the parties that affect regional interests in the following areas:

(A) Prevention of oil and hazardous substance spills.

(B) Transportation of oil and other hazardous substances.

(C) Oil and hazardous substance spill response plannings.

(D) Environmental monitoring and research.

(4) Each party has jurisdiction over the submerged and submersible lands within its territorial sea and responsibility for management of many marine resources and ocean uses. Each party has unique natural resource, social, economic, and political conditions for which local management by the individual party is the most appropriate.

1991 CA A.B. 393

(5) Parties now do not have an effective means to address mutual concerns related to transport of oil and hazardous substances in waters within and beyond the party's jurisdiction that may jeopardize ocean resources and uses important to one or more coastal parties.

(6) The 1983 Presidential Proclamation of the 200-mile United States Exclusive Economic Zone has created the opportunity for all coastal states to more fully exercise and assert their responsibilities pertaining to the protection, conservation, and development of ocean resources under United States jurisdiction.

(7) Citizens of the Pacific states and the Province of British Columbia are increasingly concerned with the environmental integrity of the ocean and protection of all ocean resources.

(8) Recent studies conducted in the wake of major accidental releases of oil or hazardous substances have concluded that the existing system of response to spills fails to provide adequate protection to ocean resources in the following ways:

- (A) Inadequate personnel training and qualifications.
- (B) Weaknesses in vessel design and integrity.
- (C) Insufficient traffic management.
- (D) Gaps in regulatory oversight.
- (E) Incomplete cost recovery by the states or provinces.
- (F) A lack of information about the marine and coastal environments.

(9) A spill or discharge of oil or hazardous substances from an ocean-going vessel has the potential of causing major regional impacts.

(b) The purposes of this compact are as follows:

(1) To assist in the promotion of interstate commerce by providing uniform regulation of the transportation of oil or hazardous substances within the compact zone.

(2) To provide a legal mechanism to regulate certain ocean activities within the United States Exclusive Economic Zone that the parties cannot now individually regulate.

(3) To enhance regional sovereignty over issues of critical importance.

(4) To direct federal agencies to act in the best interest of the region.

(5) To foster regional cooperation and pooling of resources to reduce costs and increase effective use of scarce resources.

(6) To enhance the oversight and supervision of activities of concern to the parties.

1991 CA A.B. 393

(7) To address issues of mutual concern to the Pacific states and the Province of British Columbia and enhance the parties' influence over activities of concern that are not now addressed through existing compacts, including the following:

- (A) Spill prevention.
- (B) Transportation of oil and other hazardous substances.
- (C) Spill response planning.
- (D) Environmental monitoring and research.

(8) To foster cooperation and coordination among the parties in order to increase the effectiveness of the individual party's ocean laws and programs.

(9) To provide technical assistance to parties for ocean activities covered by this compact.

(10) To provide for formal participation by the Province of British Columbia with the compact to more fully address issues of regional concern.

(11) To ensure that the citizens of the region have opportunities to participate in discussions and deliberations of regional ocean resources issues.

(12) To establish an innovative system under which the parties can represent their shared interests within the compact zone, including both of the following:

- (A) The maintenance and protection of common ocean resources.
- (B) The vessel transportation of oil and other hazardous substances.

(13) To establish uniform safety standards for routes, crews, and equipment for vessels transporting oil and hazardous substances within the compact zone and to provide oversight for the implementation of these standards and regulations by federal agencies, states, or provinces and private industry.

(14) To promote more coordinated management of ocean resources that are of mutual concern.

(15) To provide a forum for the regional coordination of the individual parties' plans for the management and protection of those areas of the Pacific Ocean and adjacent waters over which the parties jointly or separately now have or may acquire jurisdiction.

Article 2. Definitions

As used in this compact unless the context clearly requires a different meaning:

- (a) "Compact" means the representative body created by Article 4.
- (b) "Compact zone" means the portion of the oceans bordering the parties within the 200-mile exclusive economic zone.

1991 CA A.B. 393

(c) "Hazardous substance" or "hazardous substances" means any element or compound that, when it enters in or upon the water, presents an imminent and substantial danger to the public health or welfare or the environment, including, but not limited to, fish, animals, vegetation, or any part of the natural habitat in which they are found. "Hazardous substance" includes, but is not limited to, a substance designated under Section 1321 (b)(2)(A) of Title 33 of the United States Code, any element, compound, mixture, solution, or substance designated under Section 9602 of Title 42 of the United States Code, any hazardous waste having characteristics identified under or listed under Section 6921 of Title 42 of the United States Code, any toxic pollutant listed under Section 1317 (a) of Title 33 of the United States Code, and any imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action under Section 2606 of Title 15 of the United States Code.

(d) "Navigable waters" means the waters of the United States, including the territorial sea.

(e) "Oil" means crude petroleum oil and any other hydrocarbons regardless of gravity, which are produced at the well in liquid form by ordinary production methods, and any petroleum products or petrochemicals of any kind and in any form whether crude, refined, or a petroleum by-product, any kind and in any form whether crude, refined, or a petroleum by-product, including petroleum, fuel oil, gasoline, lubricating oils, oily sludge, oily refuse, or mixed with other wastes, liquefied natural gas, or propane.

(f) "Party" means a state or province that ratifies this compact as provided in Article 3.

(g) "Representative" means an individual appointed as provided in Article 4 to represent a party to the compact.

(h) "Vessel" means a watercraft or other artificial contrivance that is constructed or adapted to carry, or that carries, oil or hazardous substance in bulk as cargo or cargo residue, and that does either of the following:

(1) Operates on the navigable waters of the compact zone.

(2) Transfers oil or hazardous substance in a place subject to the jurisdiction of the United States.

Article 3. Ratification

(a) This compact shall become operative when two or more of the States of Alaska, California, Hawaii, Oregon, or Washington ratify the compact and the consent of Congress is granted as required by Section 10 of Article I of the Constitution of the United States.

(b) This agreement shall become operative as to the Province of British Columbia as a full party upon request of the Province of British Columbia and approval of the Congress.

Article 4. Pacific Ocean Resources Compact

1991 CA A.B. 393

(a) The Pacific Ocean Resources Compact is created and shall have its offices within the territorial limits of one of the parties, shall carry out its duties and functions in accordance with this compact, shall continue in force and effect in accordance with this compact, and, except as specifically provided in this compact, shall not be considered an agency or instrumentality of the United States for the purpose of any federal law. Each party participating in this compact shall appoint three persons, subject to the applicable laws of the appointing party, to undertake the functions and duties of representatives of the compact. The compact shall be invested with the powers and duties set forth in this compact.

(b) The term of each representative shall be four years. A representative shall hold office until a successor is appointed and qualified, but the successor's term shall expire four years from the legal date of expiration of the term of the predecessor. Vacancies occurring in the office of a representative for any reason or cause shall be filled for the unexpired term by the party represented by the vacancy. Any party may remove the representative for that party in accordance with the statutes of that party. Each representative may delegate to a deputy the power to be present and participate, including voting, as the representative or substitute, at any meeting of, or hearing by, or other proceeding of, the compact.

(c) The compact shall invite the Director of the Department of Transportation, the Administrator of the Environmental Protection Agency, and the Administrator of the National Oceanic and Atmospheric Administration or their designees to participate as nonvoting members of the compact.

Article 5. Pacific Ocean Resources Compact Authority

(a) The Pacific Ocean Resources Compact is authorized to accomplish the following:

(1) Facilitate the prevention of oil and hazardous substance spills through the establishment of uniform safety standards for routes, crews, and equipment for vessels transporting oil and hazardous substances to the extent that the parties and the federal government have that authority within the compact zone.

(2) Ensure a coordinated network of oil and hazardous substance spill response plans and programs of the parties, federal agencies, and private organizations.

(3) By regulation, establish the requirements for submission of, and approval by, the compact of a contingency plan by any vessel transporting oil or hazardous substance in the compact zone. The requirements shall be at least as stringent as the requirements for spill response plans under Section 4202 of the Oil Pollution Act of 1990 (P.L. 101-380). A plan developed in accordance with the regulations adopted by the compact and approved by the compact shall satisfy the requirements of Section 4202 of the Oil Pollution Act of 1990 and any requirements of an individual party for submitting a vessel contingency or spill response plan. In establishing regulations under this subdivision, the compact shall work closely with officials of the parties to assure that the vessel contingency plans required under this compact are at least as comprehensive as similar plans required by the parties and to integrate, to the fullest extent possible, any requirements for vessel contingency plans in effect at the time the compact initiates its requirements under this subdivision.

1991 CA A.B. 393

(4) Establish and maintain an informational clearinghouse related to spill response, including a directory of personnel, equipment, technical expertise, organizations, and other resources available to assist as part of a regional oil or hazardous substance spill response.

(5) Provide a forum for discussion and recommendation to resolve conflicts among member parties or the federal government regarding various ocean resources programs that have been or may be established by each party.

(6) Provide opportunities for public participation in compact activities by holding meetings of the compact in various locations within the territorial limits of the parties, providing opportunities for public comment at meetings, and developing a public outreach program.

(7) Designate state or provincial agency officials to act on behalf of the compact as liaisons with federal agencies.

(8) Identify the regional data needs related to ocean resources and recommend a method for compiling the data in a format that can be shared by all parties.

(9) Consult with and advise any pertinent party or federal agency with regard to problems connected with ocean resources management and recommend the adoption of any rules or regulations the compact considers advisable that are within the jurisdiction of the agency.

(10) Establish sanctions and a schedule of civil penalties for violations of the rules or regulations of the compact and impose those sanctions or civil penalties in accordance with Sections 551 to 559, inclusive, and Sections 701 to 706, inclusive, of Title 5 of the United States Code.

(11) Request the United States Coast Guard to enforce or assist in the enforcement of any regulations adopted by the compact related to the prevention of and response to oil or hazardous substance spills in the compact zone.

(b) In addition to the authority granted under subdivision (a), the compact may do any of the following:

(1) Accept grants and gifts.

(2) Enter into contracts for whose performance the compact shall be solely responsible in order to support its operations.

(3) Conduct and prepare, independently or in cooperation with others, studies, investigations, research, and programs relating to the purposes of this compact.

(4) Conduct public hearings on matters pertaining to the purposes of this compact.

(5) Issue subpoenas.

(6) In accordance with the provisions of Sections 551 to 559, inclusive, and Sections 701 to 706, inclusive, of Title 5 of the United States Code, enforce the rules and regulations adopted by the compact to carry out the authority of the compact as set forth in this article.

1991 CA A.B. 393

(7) Appoint technical and advisory committees for the purpose of advising the compact on regional ocean resources issues, data needs and format, and other purposes related to the compact's activities. A technical or advisory committee appointed by the compact shall not be subject to the provisions of the Federal Advisory Committee Act (P.L. 92-463, as amended).

(8) Allow a variance from the provisions of this compact or rules or regulations adopted by the compact pursuant to this article. A variance shall be based on a showing by the person or entity seeking the variance that the activity allowed under the variance will have no regional impact and that the variance is economically necessary. Under no circumstances may a variance result in the regulation of the transportation of oil or hazardous substances according to standards less stringent than standards imposed under federal law.

(c) The compact shall adopt all regulations necessary to carry out its duties and exercise its authority under this article. The compact shall adopt the regulations in accordance with Sections 500 to 559, inclusive, of Title 5 of the United States Code.

Article 6. Pacific Ocean Resources Compact Organization

The compact shall select a chairperson and a vice chairperson. After the initial chairperson and vice chairperson are selected, the compact shall establish a rotation for the selection of the chairperson and vice chairperson so the office rotates through the parties to this compact. The compact shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications, and compensation. The compact shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory parties, but shall meet at least once a year.

Article 7. Voting and Quorum

(a) A majority of the representatives shall constitute a quorum.

(b) Each party shall be entitled to one vote. No action or decision of the compact shall be approved unless the action or decision receives a majority of the votes of the parties.

Article 8. Support Agencies

The compact may contract for the staff support necessary to carry out the purposes of this compact or request appropriate agencies of the signatory parties to act as the research agencies of the compact.

Article 9. Parties' Powers Under Compact

Except as specifically provided in Article 5, nothing in this compact shall be construed to limit the powers of any party or to repeal or prevent the enactment of any legislation or the enforcement of any requirement imposing additional conditions and restrictions to conserve ocean resources.

Article 10. Absence

1991 CA A.B. 393

Continued absence of representation or of any compact representative from any party shall be brought to the attention of the appointing authority of the party not represented.

Article 11. Funding

(a) Each party shall contribute to the support of the compact according to the party's relative proportion of the party's gross state product, but each party shall contribute at least 10 percent of the total annual budget for the compact, and no party shall be required to contribute more than 50 percent of the total annual budget for the compact.

(b) The annual contribution of each party shall be figured to the nearest one hundred dollars (\$ 100).

(c) The compact shall prepare an annual budget which shall be approved by vote of the compact. After approval, the proposed budget shall be presented to the chief executive and legislative body of each party.

(d) Each party shall be responsible for the expenses of its own representatives.

Article 12. Withdrawal From Compact

This compact shall continue in force and remain binding upon each party until renounced by it. Renunciation of this compact shall be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties to the compact.

SPONSOR: ASSEMBLY BILL
No. 393

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Introduced by Assembly Member Hauser
(Principal coauthor: Assembly Member Farr)
(Coauthor: Assembly Member Felando)
(Coauthors: Senators Marks and McCorquodale)

January 31, 1991

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